

REMARKS

Claims 1 and 3 through 14 are pending in this application. Applicant notes with appreciation the fact that the Office Action (Action) states that claim 3 would be allowable if rewritten in independent form. However, for at least the reasons set forth below, Applicant respectfully submits that all of the pending claims are patentably distinguishable over the cited art.

Claims 1 and 4 through 14 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,927,796 to Whitehouse.

Whitehouse discloses a closure, or as is clearly depicted in Figures 1-6, a dust cover, for a conventional pressurized aerosol container. To secure the dust cover to the container, two diametrically opposed lips extend radially inwardly from a lower edge portion of the closure to engage an annular slot on the container. A manually actuatable tab is provided for freeing the closure from the container. The tab is connected to the lower edge portion of the closure by a flexible hinge. To remove the dust cover from the container, downward movement of the tab is applied, which releases the diametrically opposed lips from the annular slot.

Claim 1 recites an easy open, reusable, removable closure apparatus for a container. The container has a terminal end having an orifice and a radially outwardly extending bead having an outer surface and a radially outwardly extending undercut. The closure apparatus has a cap portion having a top, a peripherally depending side wall comprising an inner surface that conforms to the bead outer surface and a radially inwardly extending peripheral lip that engages the bead undercut sealably securing the closure to the container. Material housed in the container is secured in the container by the cap portion. The cap portion has a handle depending from the cap portion. The handle has a fulcrum portion that abuts an outer surface of the container neck.

Claim 13 recites a method of opening a container using the easy open, reusable, removable closure apparatus for a container having a terminal end having an orifice and a radially outwardly extending bead having an outer surface and a radially outwardly extending undercut. The reusable closure apparatus comprises a cap portion having a top, a peripherally depending side wall having a radially inwardly extending peripheral lip that engages the bead undercut sealably securing the closure to the container. Material housed in the container is secured in the container by the cap portion. The closure apparatus also comprises a handle depending from the cap portion. The handle further comprises an upper portion, a lower portion, and a fulcrum portion there between the upper and lower portions. The fulcrum portion abuts an outer surface of the container neck. The method comprises the steps of holding the container and the lower handle portion of the handle with at least one hand and depressing the lower handle portion toward the container until the peripheral lip disengages the bead undercut.

Claim 14 recites a method of reusing the easy open, reusable, removable closure apparatus for a container having a terminal end having an orifice and a radially outwardly extending bead having an outer surface and a radially outwardly extending undercut. The reusable closure apparatus comprises a cap portion having a top, a peripherally depending side wall having a radially inwardly extending peripheral lip that engages the bead undercut sealably securing the closure to the container. Material housed in the container is secured in the container by the cap portion. The reusable closure also comprises a handle depending from the cap portion. The handle further comprises an upper portion, a lower portion, and a fulcrum portion there between the upper and lower portions. The fulcrum portion abuts an outer surface of the container neck. The method of reusing the reusable closure apparatus comprises the steps of providing a container and pressing the cap portion of the easy open, reusable closure apparatus firmly down over the bead until the peripheral lip engages the bead undercut.

To anticipate a claim, the cited reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant

respectfully submits that Whitehouse fails to disclose or suggest each and every element of the claimed invention.

The claimed invention includes a radially inwardly extending **peripheral lip**, to sealably secure the closure apparatus to the container. This feature allows the closure of the present invention to secure materials, such as pressurized contents, in the container (specification, page 4, lines 24-25 and page 5, lines 29-32). To the contrary, the only mechanism securing the Whitehouse closure to the container is two diametrically opposed lips. Nowhere in Whitehouse is a closure apparatus with a radially inwardly extending peripheral lip remotely disclosed or suggested. As such, claims 1, 13 and 14 are patentably distinguishable over Whitehouse.

Moreover, Whitehouse fails to remotely disclose a closure apparatus that sealably secures a material housed in a container, as recited in claims 1, 13 and 14. The Action contends "the closure of Whitehouse can perform the intended function when placed on an appropriately sized container without a valve which houses material having a particle size larger than any space between the closure side wall and bead of the container" (see Action, page 3). However, the Action fails to cite any support in Whitehouse for this contention. To the contrary, Whitehouse discloses that his invention is only a closure for a conventional pressurized aerosol container (col. 2, lines 17-26), which does not have an open top where the contents can easily spill out. Referring to Figs. 1 through 6, it is clear that the closure of Whitehouse is a dust cover. In fact, the contents of the Whitehouse container never come in contact with the closure, therefore the closure never functions to secure the contents in the container, unlike the claimed invention. To the contrary, the food topping or other material contained in Whitehouse's invention is secured within the container by a separate valve under the container's dispensing "sleeve" (col. 2, lines 21-27). It is respectfully asserted that if the contents were in contact with Whitehouse's closure, the contents would leak out under the bottom edge of the closure adjacent to the container's rim, which is designated by Whitehouse as 20. Clearly, the closure cannot, nor is it intended to, provide a material or fluid-tight seal, to secure the contents in the container, as in the presently claimed invention.

In addition, the Action also contends, as it pertains to the limitation "wherein a material housed by said container is secured in said container by said cap portion" that Whitehouse meets the limitation, with respect to claims 13 and 14. The Action states "The material usually housed in the container of Whitehouse is a thick viscous material which is too thick to seep out between the side wall of the closure and the bead of the container. This material would be retained by the closure if the valve of the closure malfunctions and/or allows some material to escape." Again, Applicant respectfully submits that the Action fails to cite anything in Whitehouse in support of this contention. The only indication of the contents of the Whitehouse aerosol container is in col. 2, lines 17-20, which state "...a conventional pressurized aerosol container 10 has a body 12 for storage of a material to be dispensed, such as food topping or the like." Moreover, there is no disclosure in Whitehouse regarding potential failure of the valve and the capability of the closure to retain the contents of the container. Therefore, the Action's contentions appear to be baseless, absent a showing to the contrary in Whitehouse.

Another important distinction between Whitehouse's closure and the claimed closure apparatus is their respective methods of operation. Whitehouse's closure employs a standard inverse pressure sequence. Descending pressure on tab 34 in a southerly direction causes the closure to move 180 degrees in an opposite, northerly direction. In contrast to this movement, pressure on the handle lower portion of the claimed closure apparatus in a lateral direction toward the side of the container causes the cap portion to move 90 degrees upward in a northerly direction. To redirect an applied force back toward the source is simple, as in Whitehouse. To redirect such force in a 90-degree direction away from the force is significantly more complex, as in the presently claimed invention. Clearly, Whitehouse fails to anticipate this method of operation, as recited in claim 13.

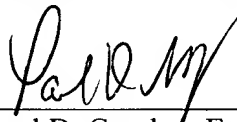
Furthermore, the fundamental operating mechanism is different between Whitehouse's closure and the claimed closure apparatus. Whitehouse describes the movement of tab 34 as having the effect of pushing the dust cover up, in a hinge-like manner (col. 3, lines 27-59). The principle of the closure apparatus of the present

invention is not a hinge, but a lever over a fulcrum. This is an important distinction and defines the fundamental principle that causes each system to operate. Clearly, Whitehouse fails to anticipate this mechanism, as recited in claim 13.

Therefore, it is respectfully submitted that Whitehouse fails to anticipate the invention recited in claims 1 and 3 through 14. As such, Applicant respectfully requests passage of this application to allowance. Should, for any reason, the Examiner believe that this application is not in condition for allowance despite the above arguments, Applicant's attorney kindly requests a telephonic interview with the Examiner and/or her supervisor to discuss the merits of this matter in detail prior to further action by the USPTO.

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Respectfully submitted,



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